

Contemporaneous Attendance Note on 16 January 2025

Before Mrs Justice Collins Rice (“J”)

Attendees:

- Evie Barden of Landmark Chambers (“EB”)
- Myriam Stacey KC of Landmark Chambers (“MSKC”)
- Sanya Azam of Eversheds Sutherland International LLP (“SA”)
- Lousie Casey of Eversheds Sutherland (International) LLP (“LC”)

Clerk on phone who asks judge to come down.

Correspondence between clerks (inaudible)

Judge enters at 14:05

Clerk: In the matter of...Morrisons v Persons Unknown as described in

MSKC: I appear on behalf of all these Claimants.... this is an urgent notice application.

J: And is the person behind you from your legal team?

MSKC: Yes

MSKC: Little notice has been given... but gave notice that was being issued today, have had full set of documents which include full set of skeleton argument.... You can take that usually no notice approach in injunctions against persons unknown, we took it that no notice application better.

J: Is this an application for relief which if granted might affect freedom of expression in the Convention?

MSKC: We acknowledge that it would be engaged, in relation to public highways.

MSKC: Take step back, housekeeping, electronic bundle and now hard copy bundle handed up, apologies for lateness also hopefully you have been able to read through the detailed skeleton?

J: Yes, I have read that.

MSKC: And the suggested reading list?

J: Yes, but I think you had missed one out.

J: I've read claim form, application notice, glanced at witness statements, no more than that.

MSKC: There is one claim but separate orders...appropriate given number of sites.

MSKC: Going to give brief intro....five contextual points in...hearing... for a forward-looking precautionary injunction, which we contend would result in unlawful activity on our land and unreasonable interference with our rights of passage over private land and public highways. First...in term of identity... C1 is the fourth largest supermarket operator and then there is C2 and C3 who are subsidiaries. Clients own the sites...freehold/leasehold... We're dealing with an agricultural campaign after the Autumn Budget...operating on a nationwide basis...making a list of demand which published on 9th of this month....now taken matters into their own hands. The situation has manifested and they now intend to target regional distribution centres (“RDC”). The specific date is tomorrow. 17th is the specific date but seems that there may be other people who envisage an even looser timeframe.

All of the 8 sites are published on my client's website... can be known publicly...the RDCs are all critical national infrastructure, part of a critical national food security... Mr Todd's witness statement is deals with this. There are certain offences in the Public Order Act 2023 in relation to post-protest activity but we're dealing here with the threat and trying to prevent manifestation.

Fifth and finally, defendants are persons unknown as we can't identify them at present. There's reference two-pronged approach: 1) first those who trespass on private land and those who prevent access to accessways. Prohibitions two-fold. First, to protect against threat of trespass. Second, there are the access roads. There's only one site which doesn't include access road because we took the view that it was not necessary as it abuts the highway. We'll come onto that.

There are four issues requiring determination: (1) whether sufficient notice has been given.

J: It's not just notice, its ability to deal with the application because of section 12 of the Human Rights Act 1998.

MSKC: I need to satisfy your Ladyship that you have jurisdiction.

(2) Whether the substantive requirements in *Wolverhampton* have been met; (3) whether procedural safeguards in same judgment have been met? (4) If you are with me and we get that far, there are ancillary matters like alternative service.

MSKC: I propose to deal first with service, then substantive requirements of cause of action, why compelling justification for the relief, any reasonable defences and then any procedural requirements.

MSKC: My lady, I deal with notice in paragraph 7 of the skeleton argument.

J: What about section 12? I am not able to grant relief that you've taken all practicable steps or there are compelling reasons. That's what my eyes are fixed on.

MSKC: Yes, I deal with that at end. *Wolverhampton* formulated as reasonable steps so it is also one of the procedural requirements. I fully recognise I am in the territory of section 12 and that the Convention right is engaged.

Reads out section 12...*"Taken all practicable steps to satisfy..."*

We haven't rested on (b) (referring to Section 12). We might have, in my submissions, suggested that given nature of protest, there is a fear of a rush to commit acts to draw attention to cause which would defeat the injunction as we are seeking to prevent that activity.

J: You're resting your case on plans for organised nationwide protests tomorrow. How would putting them on notice defeat the purpose of something that's happening tomorrow? What steps were you concerned about?

MSKC: The first point, there's not been enough time to serve with 3 clear days. We've done a lot to get application together. We cannot bring it to anyone's attention sooner than this.

J: When did you apprehend it happening tomorrow?

MSKC: At the beginning of the week. One cannot notify about a prospective application when not certain it will be made, until one has considered the evidence and prepared the case on the basis it is going to happen. It is application that would be the trigger.

J: So you're saying all practicable steps and that there were no practicable steps that could have been taken sooner?

MSKC: We have done what we can given the very tight time constraints. We have not said there's risk of escalation, we've taken all reasonable practicable steps after issuing the application. We sent the documents in order to be as open and transparent about notice. It was not much notice but there was not much more that could have been done.

J: Apart from timing, notice given to whom?

MSKC: It mirrors the application for alternative service, save to one extent. We've uploaded to website that been identified, to emails addresses on those websites, and we'll be putting notice on land, if Court is minded to grant the injunction but we have not had time for that.

J: So you've uploaded to the websites of which you are aware... that you understand are part of the organisation structure's and sent to individual email addresses but you are not aware of whom is behind the emails?

MSKC: Reference in para 93-95 of Mr. Todd's witness statement about what we've done. We're at page 124 or thereabouts.

J: Sorry which page?

MSKC: 123 of the hearing bundle

J: Notice of proceedings yet...paragraph 93 says 'decided' and that sounds like a decision was made?

MSKC: Means given what notice was available, rather than choosing between options. These are the practicable steps in the circumstances.

J: That's helpful clarification, you've made the application for an interim relief with such notice that you were able to give, which is inevitably short.

MSKC: Writer of witness statement is conflating options...

J: Yes, I am testing what options you had and what options you didn't take. You are explaining, as I understand it, that all practicable steps which you could take, you have taken.

MSKC: The application issued last night.

MSKC: So, at paragraph 95, explains steps taken, uploaded copied to MorrisonsCorportate.com, initial email sent to Farmers to Action. Then a further message to Farmers to Action when we knew the hearing was going to take place.

J: What was sent in said email to Farmers to Action and when?

MSKC: It was sent today at midday...that please note that Court proceedings have been issued....this was notification of hearing time and courtroom. Prior to that, notification that the email was sent.

J: And this info@farmerstoaction.org, is this... is it your understanding that this is the one and only organizational hub known to you?

MSKC: Yes, only email address we are aware of.

MSKC:....take you alternative service at page 255... service dealt with at page 257 you see at paragraph 8,... got to upload email address listed at Schedule 3, the only email address in Schedule 3....that there was only one we're aware of...if any others, we'll add them in.

J: Is there clarity in the evidence before me as to the research on who it is appropriate to serve and the results of those searches?

MSKC: The difficulty is that the organisation is mainly on social media sites and we don't have access to all social media site. There are closed Whatsapp groups. This is not a situation where everything is out in the open.

J: I'm a bit surprised.

MSKC: ...Page 114, para [73]....in support Mr. Todd says apparently that... 10th Jan action including Willow Green and you see the quote there.

J: I meant The Farming Forum, that sounds like a website.

MSKC: I don't think that's openly accessible.

J: In Ms. Throup's witness statement, understand that Whatsapp group is being used to organise. She's Senior Affairs Manager at Morrisons.

J: Private whatsapp group....

MSKC: It's a fast moving situation. Protestors on our site on 10th January, which resulted in us considering whether or not to bring an injunction. We produced evidence and we have one email address.

J: Any ideas/evidence about relationship between the events and the email address.

MSKC: Mr. Todd's witness statement at para 63 described Farmers to Action, at page 110 of the Bundle. So para 63 is where he described the lobby group..... which is described as set out in that paragraph... and Together Declaration... and then the Mission Statement which was released by FTA.

J: So Farmers to Action.... what about Together Declaration, nothing on their website?

MSKC: Mission Statement...issued by Farmers for Action so that's covered... Not asking for limited action.

MSKC: Any person who might be affected...yes I accept that.

MSKC: I'll need to take instructions. I'll ask you to consider what constitutes "all reasonable steps...". On the back off escalation, not sure who those protestors on the ground are, it might be the case that Together Declaration have nothing to do with this. In its proper context, what we've done it taken all practicable steps. If you think further notice will be required, I fall back on section 12(2)(b) of the Human Rights Act. There are compelling reasons because there wasn't time.

J: Well, I think that goes to practicably rather than compelling reason.

MSKC: Well; I accept that.

J: We can't proceed in absence of parties [without being satisfied about notice?]. I'm not doing any throwing out.

J: What I'm minded to do, and reflecting... is that, we proceed today in absence of Respondents on the basis that on the evidence I have, as clarified by you, bearing in mind the particular short period of time between you becoming aware of the plans for tomorrow and tomorrow, that such steps as you have taken fairly ought to be regarded as all practicable steps for present purposes. But, there is a but, which is your continuing obligation to consider take all practicable steps including to put on notice on anyone who comes into the scope of the order. I am prepared to proceed under caution...under an amber light. If we get as far as order, there will need to be a recital of any Respondent's right to apply to Court to set the order aside on the ground they were not property notified and should have been. Bearing in mind CPR for making an application.

MSKC: Thank you for that indication.

MSKC: You may have picked that up, in light of *Wolverhampton*, we had proposed proceeding without a return date. In order to allay your concerns, if we are to proceed under amber light, it might be that a return is appropriate.

J: My view that there should be a return day. This is a major intervention made in a great hurry if made. It is appropriate for the court to maintain a close eye on it. If relief is granted today, I am more likely to order it on a very short basis and with a view to ensuring that everyone who has an interest is [notified].

MSKC: Recent Airports case, no return day... different view there, but I won't push back on that.

MSKC: Does that take us where we need to for present purposes?

J: Yes.

MSKC: Next on my checklist is the law. Paragraph 32 of the skeleton argument, the principles now well established after *Wolverhampton*. *Valero*, *Shell* and then you've got the *ex tempore* judgments in the Airports cases. 3 very general principles:

- (1) Court has discretionary power under section 37 of the Senior Courts Act. I think uncontroversial. In all cases where it is just and convenient to do so, including prohibitory injunction, where there is a fear of apprehended harm.
- (2) You may have picked up in bundle- Mr Justice Lavender's decision in *Natioanl Highways v persons unknown*
- (3) Then special consideration where claim is against persons unknown. The jurisdiction applies in exceptional cases. The Supreme Court endorsed the Court's decision in *Canada Goose*. That get us to Justice Richie in *Valero* where there are 7 substantive requirement and 6 procedural requirements. There is little fundamental difference between final and interim [relief]. What I propose to do is follow the *Valero* checklist.

J: Helpful. I'm familiar with the cases but no opportunity to go back to them today. The issue of newcomers that is the issue regarding the description of persons unknown [...] coming into the category after the order is made.

MSKC: Here, they are all newcomers.

J: No trespassers...

MSKC:... Start of proceedings, everyone caught would be newcomers.

J: Asking question due to steps in my own mind. It's the description of persons unknown adopted. Twin track approach – persons trespassing and persons blocking access. Indulge me with a slow paced walk why those words rather than addressing the category of persons unknown in relation to the present category that...known intend to do this.

MSKC: Para 82, mindful of *Canada Goose*: defined (1) by conduct, rather than objective; and (2) in clear terms. To us, seems [better because] trespass is one cause of action, if group things together, becomes difficult to describe, we are trying to achieve maximum clarity. There might be people who go into boundary of site and obstruct, which would be a trespass, who would fall in P1. Then people standing outside who fall into P2.

J: We will come onto those causes of action in due course. Did it occur that in description it might be desirable to go a step or two further than referring to wholly what might be appear... Find a form of wording. So for example in the front cover of the skeleton argument rather oddly as "other"... for transparency, talking about trespassers and blockader. For public understanding would be desirable to do that.

MSKC: Agreed.

MSKC: We need permission to amend the claim form. In relation to one site, SV1, no access road, need to strike those words though. Amendment in due course.

MSKC: *Valero* checklist?

J: I've followed that through.. read skeleton.

MSKC: Para 37-38, we've satisfied you that have required title to the sites. Plead trespass in relation to site we are freeholder and leaseholders of. Access road, para 38 that includes private access roads,

J: Owned by?

MSKC: Third party but we have right of access over.

MSKC: There are public highways also. Save for SV2, parts of highway where it is necessary to make the trespass part effective.

J: You're basing this application on the legal fact of your clients' right or ownership,...and entitlement to prevent trespass and that is the basis. Insofar as it strays into fuzzy area of public road, where my attention needs to be particularly beady, I am presented with evidence that the extension to the public highway is necessary to make the property trespass focus protections work in practice. As I understand it, it is not enough to exclude trespasser from site if they can disable site by blocking access to public highways.

MSKC: The foundation is that we need to use the sites we have ownership of. We have a cause of action in relation to the second limb – the second limb will catch unlawful actions. The terms of order sought would prevent unlawful obstruction ...right that two are interrelated. It is properly balance and the Convention rights don't trump our rights to access.

MSKC: ...take you to the sites, Mr. Roberts and Mr. Todd give evidence... section C of the skeleton, paragraph 10 and take you carefully through sites in issue. First, Swan Valley, in Mr. Todd's Statement at paragraph 9 of his statement... what you see in skeleton argument. SV1 – Swan Valley, three separate sites. Page 91 of the Bundle, sorry plan at 127, you will see the site there. SV1. So the site is there coloured blue. Private access road coloured orange, Cobb Drive. Roundabout pink. 2 access – one to right, one to left which is the only access to the site. The orange road [on the plan] owned by Aviva, actually called Drive not Cobb Way. Paragraph 9, title information. Paragraph 17 sets out the SV1 lease. Necessary to include areas of Cobb Drive in injunction boundary.

J: Yes.

MSKC: SV2 is next site.

J: Just before we leave that site, you want to be able to exclude trespassers from blue zone and want to be able to ensure that here is no blockage of the yellow private road and no blockage of the public road. On what basis do you stop the roundabout?

MSKC: Have to start/stop somewhere...

MSKC: 10th January, there was a manifestation. A protest at Willow Green which included roundabout. We have to draw line at some point.

J: Not suggest you underbid... I am trying to capture logic why you are going outside blue zone at all.

MSKC: The logic is need to catch the area of access, so, only access, to deter that access. Strikes appropriate balance between our right to do so as Defendants.

MSKC: Geographical limits we have to ensure is there is appropriately drawn.

J: In each case, evidence presented is blue shaded matter, and the evidence is that, beyond the shaded areas, the immediate environs in which you apprehend the risk of blockage but on a minimal basis. As we've been discussing, this is partly in reliance of the ancillary nature of the principal trespasses provisions and the standalone tortious activity relating to activity on the environs.

MSKC: and in recognition that relief against persons unknown is exceptional remedy and needs to be properly circumscribed.

MSKC: Set of hard copy plans. Would it be helpful?

J: Not much I can do anything with these plans. Not likely to be controversial that you [have title] and what you say about access is the best evidence I have before me today. I have no basis to come to any other view. Whether we need to step through all plans, I don't...

MSKC: ..page 57 of the hearing bundle starts part page 56, *"On reviewing these, it would be appreciated...."*

J: Well, that evidence I can and do accept but that doesn't mean I make findings about anything about it. We have to proceed on the basis you say you own the properties you own, that what is said about it being necessary about keeping them clear, is right.

MSKC: I'm grateful, that's substantive requirement 1. With 2, we deal with in our skeleton at para 39-40...full and frank disclosure...at para 40, message of support that Morrisons have been given to farmers, that doesn't undermine application...at para 40b) reference to supermarkets being targeted now looking at tractors outside supermarket. These are very serious views, neither here nor there that they might require sympathy. We have evidenced full and frank disclosure.

J: My attention been drawn to some matters. There are unknown unknowns but I can't do anything about them.

MSKC: Deal with human rights position in due course.

MSKC: Sufficient evidence to prove the claim. We are seeking a prohibitory injunction, which is a risk based test. You've got the evidence...I can walk you through it, paragraph 63 pg. 110 of Mr. Todd's witness statement re. relevant groups. The critical question is whether there is a sufficient risk. Look down to section 4...reference to mission statement at page 149 of the bundle. Before that...emphasis...FTA groups described itself as "dedicated to defending farmers and citizens across Great Britain and championing for fairness". The FTA's Mission Statement sets out abolition of inheritance tax, fairness in food pricing and national food security, refers to why... needs action group, government to reconsider priority, etc... next page, Farmers to Action. Page 150 goes on to show a screenshot stating that 2025 will be the "year of action", "our demands our clear", and makes reference to national protest starting on January 10, next page 151... January 10 national protection, "follow our socials".

MSKC: Trying to look for references to taking matters into their own hands.

J: Yes para 67 on 112.

MSKC: page 112 para 67, it talks about "not backing down", "uniting across the country for days and weeks", back to Andrew Todd at page 115, para 74, describes the 10 January action rolling road blocks

J: Was all this action on public highways?

MSKC: Yes, all on public highway apart from Willow Green where the protests went into the vicinity of Willow Green. Stores were also targeted by a number of tractors... 80 at Willow Green...50 at Gadbrook. Copy of video Willow Green and effect of that on protection. At para 76 car park, para 77 is reference to reporting in Farmers Weekley.

J: Just in para 77, "farmers are using tractors to block distribution centres", this the first piece of evidence that they are targeting RDCs?

MSKC: Yes, on the same day, the evidence goes on to reference the blockade at Willow Green....7:30 on Fri overnight, roundabout joining Bristol Road....falls short of what we are asking for...entirely on our land...Sorry the document one...on bundle highway. The first one was on our land.

J: But, I'm just point by point, this is evidence that persons unknown have trespassed, so not entirely forward looking?

MSKC: Based on what has happened this is history of these acts having been committed.

J: last Friday?

MSKC: yes last Friday, the evidence is very compelling there was a complete blockage with delivery lorries backed up, there is evidence of impact in Mr Roberts' statement he says approx. 76 retail stores and 132 wholesale deliveries were impacted.

J: Empty supermarket shelves, does that include fresh produce?

MSKC: Yes, pg. 60 Mr Roberts' statement which details with the impact of the Jan 10 actions

Brief pause whilst judge reads

J: Yes, but so we have evidence of estimated commercial impact on your client, I'm assuming you will go on to develop the facts about impact. You mention profits and reputation, the principal weight you place is on the damage to national infrastructure.

MSKC: Yes, Mr Todd refers to the supply chain in his witness statement, page 118 sorry 117 rather...which sets out the designation I would like your ladyship to draw an inference the impact this would cause to the critical national infrastructure. The nature of the blockage, not too much imagination to draw such inference.

J: I can, I mean again, the issue I'm thinking about is the nature of the harm you're seeking to avert, lost profits can be dealt with in damages. You're principally saying that the issue here is focused on the disruption of food and other essential supplies, not least to small communities.

MSKC: yes, some of centres are in and supply to small rural areas. Page 68 para 51.4

J: I don't understand there to be evidence before me that this has happened yet

MSKC: refer to the shelves empty photo and tweet. Demonstrating this has happened and recognition that this is their objective and because of this "we maximise the pressure". This is specifically from Farmers To Action "The time to show you back farmers is now". It was posted on Saturday morning, just after Willow Green protest...

J: Is this said to be specifically as a result of Willow Green activity?

MSKC: Not specifically this image is showing a store in Taunton...in recognition that if harmed supermarkets would be helpful for the farmers' cause. As Mr Todd refers to other RDCs being targeted page 115...para 80.3...drone footage...likes and TikTok comments "12 hours is not long enough we need to keep going for days and weeks". Last reference para 80.1.3 is to Morrisons RDC lost revenue and product shortages. Then you've got para 81, and at 83 effect of disruption/disturbance.

J: The critical national infrastructure point at para 81. You are not asking to exercise under the Public Order Act?

MSKC: Not under the Public Order 2023, I can't yet as an offence has not been committed under the act, too early... have to have been convicted. Later down the line, not now.

J: But you're not ask risk of asking me to shortcut that?

MSKC: This has been considered by other [cases], not considered helpful. Those offences are dealing with aftermath. Judges have consistently ruled that landowners are [able] to rely on civil remedies.

J: Helpful thank you.

MSKC: Paragraph 85 which is reference to 17th January. This is an action in relation to where a local supermarket... driving in banners...reference to that being coordinating....para 86, target client and general and wider supermarket industry in supermarket point... Facebook page, concerted effort around the country, soon have supermarkets empty.

J: So it's a more strategy of targeting of supermarkets?

MSKC: The evidence is that the planned action is not restricted to the supermarket car parks, it is a more strategic target at the wider supermarket infrastructure. There may be particular people who only intend to go to the supermarkets... I cannot say there won't be some who only go to supermarkets but there will be others who do not...clear evidence of desire on part of some members of the faction to do the wider... para 86.2... video posted...endorsing and encouraging further action. Targeting supermarket supply chains. Para. 87.. there is a clear and consistent rhetoric that further action is intended "if there is ever a time it's now".

J: para 87.1, reads out "with 40 separate events strategically organised starting 9am on Friday until 8:30 on Saturday".

MSKC: Refer to the statement of Sophie Throup, Morrisons agriculture head at page 238 paragraph 8. She refers to a WhatsApp message saying we need to block distribution centres. Refers to other WhatsApp messages starting at page 242 of the exhibit

J: So these are private messages?

MSKC: ...Private message she's been able to access.

J: Yes.

MSKC: I've highlighted one at the bottom on the next page highlighted that there is unity that RDCs are what needs to be targeted. Then at 244, "supermarket supply chain has to be targeted" "must

stop supplying". The messages refer to team work unless we can all agree supermarkets have had it their way for too long we must stop supplying, pg. 245 the penultimate message, "staring next week we are hitting distribution centres directly 12 hours no bullshit taken"....

J: what's the date of those messages?

MSKC: they are dated 13 January which was Monday. Page 246 about blocking entrances and that it needs to be coordinated.

J: This is blocking otherwise than by vehicles.

MSKC: Could be blocked in other ways.

MSKC: The message is block the dairies and the RDC's. Then page 250, "there are laws against that, but driving round roundabouts with lorries or tractors that works" got to be done.. Sorry one more, or 2 more... page 251, reference to the public that some of public will back us. "I think it's getting close to no Mr nice guy", maybe time to start real action referring to road block, limited options here...clear rhetoric.

J: Could be said against you that these Whatsapp messages, who knows what the relevance really is but what you're asking me to look at the whole picture in terms of the of the coordinated call for action. At its highest it is a possible example of small scale people acting on that inspiration, or instruction. I'm being asked to infer that the risk that is illustrated here of the replication of this sort of activity across the nation.

MSKC: it is all of a piece, you've got the backdrop then the mission statement, then the target being supermarkets and RDC's and then the manifestation that it happened in the coordinated action on 10 January. There is the coordination on the Whatsapp messages, on user groups, encouraging and coordinating with a campaign developing as we speak and there is specific reference to 17 January and forthcoming week. I am asking you to look at the whole picture. My clients clearly fall within that target group in my submission and the evidence demonstrates the risk of...action being committed.

J: the WhatsApps are an illustration, not the foundation of the evidence

MSKC: Evidence of ham has been covered to some extent so *Wolverhampton* test, there is a real and imminent threat of a tortious act that would cause harm, the case doesn't categorise harm in a particular way. I recognise the Court can take in consideration...financial harm,...supply chain, harm in Mr. Roberts' statement... health and safety with tractors and small children. There is a grave substantial financial risk and irreparable harm more specifically to the supply chain. Mr Roberts does describe health and safety risk.

J: and presence of fuel on site.

MSKC: correct, there is fuel on site. Unless there is any specific aspect of service you'd like me to cover, those are my submissions of that part, the test for prohibitory injunction is more than satisfied.

J: I'm not applying the American Cyanamid test, but the Section 12 test. The leading authority is in s12 of human rights act, restrain publication before trial meaning interference with Article 10. The test is if it is likely to succeed at trial. It's a higher threshold.

MSKC: My submission is that it is not engaged, there are conflicting authorities on this, that it is not engaged unless you are writing on the wall. We're not restraining publication under the s12 test, it doesn't apply but will proceed on the basis that it does. It doesn't change my submissions... The activity we are seeking to prohibit is clearly tortious.

J: you address that test by saying that you would be likely to establish at a trial against persons known, likely to establish that they do not have a right to express a freedom of expression on your property and property closely related to quiet enjoyment.

MSKC: Claimants – *Patel* - not entitled to be there.

MSKC: Not shirking from my responsibility... we more than satisfy the test that we would succeed at trial.

MSKC: The fact that parliament has legislated that Critical National Infrastructure is more than de minimis is consistent with the harm piece and that it is just and convenient to grant an injunction.

J: Let's look step by step.

MSKC: Valero checklist, it is necessary to consider what defences might be raised, see 44 of skeleton, Human Rights element under compelling justification. Subject of human rights point, we are owners of the land, and cannot reasonably be argued they entitled to come to harm (*Patel v Smith*). Over the page, at para 45, no 47, Art 10/11 doesn't include right to trespass on private property.

J: reasonably familiar – no right to protection on someone else's property.

MSKC: The caveat is the municipal town example because you can't conceivably protest elsewhere may be a defence that plainly isn't the case here. The protest can be carried out at any location is position in relation to the sites.

MSKC: For the roads, we rely on public and private nuisance. For the private roads, there is no right to be there save for by permission from landowner. Highways, protection of defence under Convention.

MSKC: Deal with under para 50. (1) Deliberate obstruction of traffic not at core or Article 10/11 rights (*DPP v Ziegler*), (2) Convention Rights not absolute, they must be balanced, (3) The fact that that obstructions would amount to breach of s.137 of Highways Act.

J: it refers to the highway not access to private property

MSKC: Of which the roundabouts would form part... reads out s.137...relevant factor, reinforces first points. Paragraph 53 of skeleton argument. We must consider proportionality at para 51 of the skeleton (i) Is what they did an exercise of one of those rights; (ii) If so, is there an interference with that right; and (iii) Is there a legitimate aim. We say what they might do would constitute interference. Deal with....at paragraph 53. Court has to consider whether injunction is necessary in a democratic society to vindicate my client's rights. I can do no better than set out what's here.

MSKC: *National Highways v Persons Unknown*. Tab 7 of the Authorities Bundle, page 295 start at paragraph 25, which is the risk questions. Para 26 is the test and refers to *American Cyanamid* and 27 is where we pick up public highway point. Please read down to 35.

15:43: Judge reads, pause and MSKC ask to sit whilst this is happening.

J: Political and economic views are at the top end of the view of what's protected.

J: So yes, the checklist of factors, yes

MSKC: So, we say for similar reasons, those sub-questions re. proportionality can be answered in the same way (i) The aim of the restriction of article 1 protocol 1 rights, there is a sufficiently adequate justification when one looks at in conjunction with that they are necessary to ensure access to the sites; (ii) Interference of those rights and the aim which is the desire to distribute the produce and not to disrupt the supply chain. There is a rational connection between means chosen and the aim; (iii) as to whether there are any less restrictive means, Roberts' statement deals with the police's inability to deal with the protests and that damages wouldn't be adequate remedy. Your points about serious prevention order [under the Public Order Act 2023], not forwarding looking like injunction, Lastly is fair balance struck... yes we say we refer to Lord Justice Leggett in *Cuadrilla*...physical obstruction. And we take our argument further at 56 that any interference of rights under Art 10/11 is justified or outweighed by our ability to carry out business they are obstructing lawful business and the critical national objectives of my clients. Expanded at para 58 by saying damages are not an adequate remedy and the defendants wouldn't be able to satisfy an order for damages in any event. This is dwarfed anyway by broader issues to security and the food supply chain.. This is the only conceivable defence I think they'd be able to raise and we've covered it in our submissions. And...I support... you have to be satisfied that you can grant the Order and then look at the Order.

J: Well, let's take it in stages. End of submissions?

MSKC: *Valero*, point 6, the last one is damages - would damages be an adequate remedy; no but we've offered a cross-undertaking in damages in case it becomes necessary. As per *Wolverhampton*. End of substantive points.

J: So I'm being asked to consider interim relief on a precautionary basis on an urgent basis at very short notice and in absence of respondents. All of those are constraints on the possibility and propriety of coming to a considered view on the ultimate merits, that's always the situation in an interlocutory application and is particularly the case here. I'm grateful for the assistance you've given and for the evidence you have put before me. I started by saying I'd looked at it in a quick manner before the hearing but it has been valuable and necessary to look at it more closely. Standing back and bringing the evidence into focus, I am [...] sorry just collecting my notes [...] I'm grateful to have been stepped through the analysis required by the authorities. On that basis looking at the evidence as a whole I am satisfied that your clients would likely to establish at trial that the forms of protests you are seeking to restrain on an interim basis will not be allowed that is because I am satisfied that you have established, on the materials before me at this interlocutory stage, that proper causes of action in relation to torts that are apprehended and that defences made by reference to Article 10 would not succeed for the reasons you have submitted, that is not where a court would bring balance of proportionality. On that basis on such analysis of the merits as is appropriate, necessary and possible at this stage, I agree that injunctive relief should be forthcoming.

J: Conscious of time but we need to examine proposed order to be made. I've also indicated that a return day is right simply because the character of the protest that are being made in connection with this broad issue...broad spectrum indeed...highly protected forms of freedom of expression. Satisfied that Court would not consider this kind of issue to be protected. Need to ensure that limitations in order made are not more than what is required. Going forward, more supervision of the Court that you were originally minded to seek for.

MSKC: Drafting...those not been identified and those who can be notified.

J: Those who can be, should be notified before the return date, active steps need to be taken to identify.

MS: We can provide an undertaking to Court...

J: Yes helpful

J: We should take some steps so that a transcript of today's hearing be prepared and served, that would be desirable. And placed on the judicial website for public access and full transparency as to what has gone on today as I am constrained as to what I can articulate as to way of reasons the public should understand that today's process has subjected your evidence and legal tests to a rigorous test and has been sufficiently scrutinised.

J: I Hesitate to add to burdens given short space of time. Is it possible to go some way to get final order settled

MSKC: I proposed recital for notification to be included as...

J: If it were possible to recite on the matters on which I have said I am satisfied, that goes to your recitals.

J: Short summary of the legal and evidential issues, would assist for transparency.

J: Questions about proposal that you have to make multiple Order. I can see the logic but makes it harder to get a grip on. Why not have an overarching injunction with annexes to the individual sites?

MSKC: for two reasons: (1) we are proposing to affix at the relevant sites so from a practical perspective this may be difficult and one large Order may be bulky confusing and, (2) it makes it longer and more difficult to follow.

J: I have a sense from the publics points of view to see an injunction and to know in greater detail which sites it impacts and notice requirements or alternative service could take the solution of having the main body of the injunction and the geographical annex.

MSKC: Everything in the same in each order, yes we can have the sites as defined in and add another schedule. We anticipated wrongly.

MSKC: Point 7 of the *Valero* checklist, identification of D. We can't identify anyone at this stage, we are mindful and aware of obligation to adjoin. Once they are identifiable they cease to be persons unknown.

J: It will be clearer and simpler to put a recital in that you will use best endeavours to identify and to join those parties.

J: Happy with twin-track approach, helps to clarify.

MSKC: In hearing bundle at Schedule 1, first persons unknown who in connection with agricultural protection groups.

J: The case is about FTA as the main group. But what concerns me this wording might not capture the individual Whatsapp groups. The demands of clarity and certainty from the authorities is quite high, people have got to know whether they fall within this. As drafted is not clear if Whatsapp groups captured.

MSKC: e.g. bird watchers... can't go on there to protest.

J: Seems to me that it would be better grammatically who enter and remain in connection with. Makes an "in connection with" to be a little broader.

MSKC: In relation to second category...

J: "with or without vehicles" because the principle application is to those doing the blockages.

MSKC: "who create or cause without or without vehicles inc. tractors in the vicinity of the protest".

MSKC: Then terms of the order, are they sufficiently clear/concise. Requires us to look at example order at page 255, at 257. Shall we take it from the top? 255, penal order.

J: I do think when it comes to no one attending from the Defendant, and in recitals of those who weren't put on notice/adequate notice to apply to have the hearing set aside.

J: Just for completeness, to return to points on which I have been satisfied. To include this in recitals also.

MS: Yes, specific site in Schedule itself.

J: Part of the reasons I am going to grant injunction, the fact of why it is made on evidence of action planned tomorrow and immediate future, does not appear there is time specific what the defendants plan. It's not determinative, if we have a return date, no obvious harm to them that they have had to hold off for a bit of time. Maybe return day on Monday. By that time, the injunction be distributed, possible that those affected will be made aware and any plans met with the injunctions.

MSKC: If we get the Order today, might not realistically give them enough time.

J: Yes short, but made with the benefit of having other side's view.

J: Not released to me, but will off the record try to make myself available. It might make sense for not 10:30 on Monday but perhaps at 2pm instead.

MSKC: Paragraph 6, prohibitions we are asking for. Scoop up procedural requirements.

J: Yes, happy with paragraph 6. I'm satisfied that's clear enough.

J: 7 goes

MSKC: Covered notification and liberty to apply at paragraph 16.

J: 72 hours' notice does not work. I think perhaps the return day is enough.

MSKC: *Wolverhampton* talking about setting aside. Can just put liberty to apply.

MSKC: We can keep 15 and just cut the time period.

MSKC: And then keep it under review.

J: I think one of the things the return the date will need to do will give directions for keeping it under review.

MSKC: And then therefore back to alternative service. Application, have to satisfy...and you can see what we are proposing.

MSKC: Names of witnesses redacted. If this was a claim, you wouldn't identify who the witnesses were, I can undertake to make an application to keep those names redacted. Haven't been able to do that.

J: Need to have a bit of think as to what you are asking for. No direction either for redacted or unredacted.

MSKC: Because of a claim form.

J: Let's do that then revisit that question on Monday.

MSKC: Under service heading....claim form addresses to be redacted.

J: It needs to be on the basis on the absolute minimum subject to making an application in time for the application to be heard on the return date.

MSKC Permission to amend claim form to delete SV1 and reflect wording of persons unknown.

J: Not complicated re. judicial website.

J: This is a matter that required anxious scrutiny. I'm grateful to you I've given this what I hope has come across as anxious scrutiny not least with the section 12 framework in play. On entirely neutral terms, thank you to you and your legal team for what you have achieved in a short space of time...clearly a lot of work has been done to get this application here which is clear.

End: 16:25